IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

ESTATE DUTY REFERENCE NO. 4 OF 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

and

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CONTROLLER OF ESTATE DUTY

Versus

PRATAPSINHJI RAMSINHJI

Appearance:

1. ESTATE DUTY REFERENCE No. 4 of 1987

MR BB NAIK, Sr. Standing Counsel for the Revenue

MR SN SOPARKAR, SENIOR ADVOCATE FOR MRS SWATI SOPARKAR & MR MK KAJI for Respondent

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CORAM : MR.JUSTICE R.K.ABICHANDANI

and

MR.JUSTICE KUNDAN SINGH

Date of decision: 22/03/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. This reference has been made by the Income Tax Appellate Tribunal, Ahmedabad Bench `A', under section 64 of the Estate Duty Act, 1953 and the following questions of law are referred for the opinion of this Court :

"[1] Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal rightly came to the conclusion that at the time of the death of the deceased Shri Karansinhji Fatehsinhji of Sagbara, no property passed which was part of the `Sagbara Estate' and consequently no Estate Duty in respect thereof was payable?

[2] Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal rightly held that the personal properties of the deceased Karansinhji Fatehsinhji also stood on the same footing as the estate of Sagbara and no property passed on the death of the deceased?

[3] Whether, the finding of the Appellate Tribunal that no property either on account of `Sagbara Estate' or any personal property passed on the death of Shri Karansinhji Fatehsinhji Vasava in 1957 and there was no question of levy of any estate duty therefor, is correct in law and sustainable from the material on record?"

2. Shri Karansinhji Fatehsinhji, former Vasava of Sagbara Estate died on 17th April 1957 and an account in Form ED1 was filed by his eldest son Ramsinhji Fatesinhji under the provisions of the Estate Duty Act, 1953, stating that there was `Nil' property which the deceased was competent to dispose of at the time of his death, and he accordingly submitted a `Nil' Return.

2.1 The Deputy Controller of Estate, Western Zone, Bombay, however, held that the deceased had complete proprietary rights over the villages of the Estate before the Estate was taken over by the Government in 1948, and that the deceased had not accepted the fact of the dispossession and was fighting for his rights. It was held :

"It will appear therefore that as at present the Vasava has complete proprietary rights over all the lands of 92 Khalsa villages. He has also proprietary rights over the 22 Dumala villages

> even though he is not getting any benefit from the same. The right of the Vasava in the lands was there before the estate was taken over by the Government of Bombay in 1948. The deceased had not accepted the fact of that dispossession and was fighting for his right to the best of his ability. Since he had initially a proprietary right in this land and since he was at no time legally divested of his right to the same, I must hold that the property belonged to him at the time of his death even though it was not in his actual possession. It is true that the property was in occupation of the Government but the Government in this country does not act in an autocratic manner. The right to own private property is guaranteed by the Constitution. It is possible that the Government which acts through human agency may make a mistake as to the effect of a particular law or the scope of its application. In that case, it has to set it right when the mistake is pointed out. The party who suffers from a wrongful decision has also the right to go to a court of law for redressing his grievances. Unless therefore a seizure of a property by the Government is legal, the owner never loses his title to the same, though for some time, as in this case, it may be that the legal owner did not have actual possession of what was rightly his. When this has been rectified, the original owner would regain the possession of the property which had all along belonged to him. It is abundantly clear from the order of the Government that it had recognised the fact that the dispossession was illegal. The Government had also decided to restore the income from the estate during the period of such dispossession to the original owner. This will show that the Government had recognised that the deceased was the legal owner of the properties at all times and had acted accordingly. Under the circumstances, I must hold that the deceased was liable to estate duty on the estate left by him at the time of his death."

2.2 We have set out in detail the reasoning of the Deputy Controller of Estate, Western Zone, Bombay in his order dated 11th March 1963, because, this very reasoning has been adopted before us for contending that the deceased was the legal owner of the properties which were purported to have been taken over by the Dominion of India in 1948, and that the estate property was liable to

payable of the estate duty as it passed on his death. The estate duty was worked out at Rs.72,62,068=00 by the said assessment order under section 61(1) of the said Act and a demand notice was issued pursuant thereto.

3. Thereafter, the Accountable Person preferred Estate Duty Appeal No. GUJ-16/62-63 under section 62 of the said Act before the Appellate Controller of Estate Duty, New Delhi. The Appellate Controller, by his order dated 20th October 1970, upheld the finding of the Deputy Controller that the deceased left an estate which passed on his death and in respect of which, estate duty was payable. In paragraph 6 of the order, he held :-

> "In my opinion, the deceased at the time of his death had an `Actionable Claim' which materialised when the Government of Bombay passed the resolution dated 13th January 1958, by which the rights of the Vasava over the Sagbara property were restored to the present Vasava in January 1958. Section 2(16) of the Estate Duty Act states that the property passing on death includes the property passing either immediately on the death or after any interval either certainly or contingently. In this case, property passed after an interval. The Sagbara Estate was in the possession of the Government which held the property as a constructive trustee for the benefit of the real owner i.e. the deceased. Therefore, on the death of the real owner of the property, the beneficial interest in the property passes. The Accountable Person himself asserted in his letter dated 27th July 1967, addressed to the General Secretary, Government of Bombay, that the property of the deceased was held by the Government in Trust. This assertion was a firm establishment of his rights over the property as the successor of the deceased. Once the claim is established, the Accountable Person cannot now abandon his previous position. Under these circumstances, I hold that the Deputy Controller was correct in coming to the conclusion that the deceased left an estate which passed on his death and in respect of which, estate duty is payable."

3.1 The Appellate Controller, however, in view of the fact that an amount of Rs.30 lakhs was determined as payable to the Accountable Person by way of compensation under The Sagbara & Mevasi Estates (Proprietary Rights

Abolition etc.) Regulation Act, 1962, held that the net value of the estate works out at Rs.30 lakhs minus Rs.36,000=00 (which were due to one Jayantilal) i.e. Rs.29,64,000=00 as against Rs.77,62,068=00 determined by the Deputy Controller. The assessment order was accordingly revised.

4. The Accountable Person carried the matter further to the Income Tax Appellate Tribunal under section 63 of the Act, requiring the Tribunal to adjudicate upon the issue, whether there was any Estate left by the then Vasava of Sagbara, and if so, what was its value? The Tribunal noted that the relationship between the Feudatory State, whose head was known as Vasava, and the Princely State of Rajpipla was regulated by an agreement which was approved by the Government of India under their resolution dated 20-9-1890. As per that agreement, the Vasava admitted his subordination to the Rajpipla State and agreed to submit to the general control of his administration by that State, as mentioned in Article 1 of the agreement. It was observed that the Vasavas of the Sagbara Estate were semi-independent Chieftains of their Estate and exercised full authority and power subject to general control of Rajpipla State till 10th June 1948. The Ruler of Rajpipla State like other such States entered into an agreement with the Dominion of India, as per which, Rajpipla State merged into the Province of Bombay in 1948 and the Government of Bombay took over the charge of the estate by appointing an Administrator. The Tribunal noted in paragraph 6 of the order that the Government of India, in 1948, proceeded under the assumption that Sagbara Estate was a part of the Rajpipla State and took over the full control and entire administration without any separate agreement with the Vasava. The Vasava thereafter protested to the Government of Bombay by taking a stand that the accession of Rajpipla State did not affect the status and right of Sagbara since it was a distinct and separate political entity. On 16-11-1950, the Government of Bombay sanctioned Rs.2,000=00 per month for his life on the application of the Vasava of the Sagbara Estate for maintenance allowance. The then Vasava Karansinh made an application on 29th August 1953 to the Government of India for sanction of a privy purse for him. The Government of India, however, informed him by letter dated 28-6-1954 that he could not be recognised as a Ruler and therefore, no privy purse can be allowed, and further that, the villages which were claimed by him as private properties could not be restored to him. It was, however, stated that the income of those villages was taken into account in fixing his allowance at Rs.2,000=00

per month. The Tribunal also noted that, after the death of Vasava Karansinhji on 17-4-1957 apparently leaving no personal property, his son Ramsinhji took up the matter, from where it was left off, by making a representation to the Government of Bombay on 29th July 1957, repeating the claim made by his father earlier for restoring the income from the property and a settlement to be made treating him as a feudatory chief. The Government of Bombay thereafter made a resolution on 13-1-1958 holding that the status of Vasava of Sagbara was akin to the status of the chieftains of Mevassi Estate in West Khandesh i.e. of a superior holder, and therefore, the action taken by the Government in past in respect of the Sagbara Estate was required to be regularised. As a consequence, therefore, the Government canceled with retrospective effect the monthly grant of Rs.2,000=00 and the adhoc grant of Rs.10,000=00 given as advance and ordered recovery of these payments. The Government accepted that the three Dumala villages and four buildings situated at Sagbara and Korai were private and personal properties of the Vasava and ordered that their possession should be handed back to the Vasava alongwith income from those villages realised from the date of take-over i.e. 1-8-1949. It was also ordered that Vasava was liable to pay land revenue in respect of his estate. The Tribunal noted that Vasava was refunded Rs.1,24,365=00 on settlement of accounts as per the noting of the Revenue Department dated 12-4-1960. After the Gujarat State was formed, `The Sagbara And Mehwasi Estates Regulations 1962' were framed, which came into force from 1-12-1962 and as per the said regulations, tenure of the Sagbara Estate, Dumala villages and Mehwasi Estate was abolished, and compensation was fixed by the Collector for the Vasava Ramsinh at Rs.30,15,926=00, which was enhanced by the Revenue Tribunal, by its order dated 1-2-1974 to Rs.68,72,370=00.

4.1 After considering the historical background, the Tribunal considered the rival contentions raised before it on the question whether the Sagbara Estate passed on the death of Vasava Karansinhji so as to attract the provisions the said Act. It held that the Government of India did not keep in mind that the Sagbara was not a part of Rajpipla State when the administration was taken over on 10th June 1948. Not only the possession of the Estate was taken over, but the personal properties of the Vasava consisting of three Dumala villages were also taken over. It was held by the Tribunal in paragraph 24 of the order that such action of the Government of India amounted to annexation of the said territory. It was, therefore, held that the Sagbara became part of the then

Indian territory by `Act of State'. The Tribunal took note of the letter dated 28th June 1954 written by the Government of India, Ministry of States in response to the representation of the Vasava informing him that, after carefully considering the matter, the Government of India regretted that it was not possible for it to recognise him as a Ruler and therefore, there was no question of fixation of a privy purse for the Vasava. It was held in terms that it will not be possible to restore Dumala villages to him since he had failed to produce supporting evidence before the Bombay Government. However, those villages were taken into account in calculating his allowance. He was further informed that a sum of Rs.4,000=00 approximately was recoverable from him as a result of initial advances taken by him from the treasury. The Tribunal noted that there was no ambiguity in this letter and the Government did not recognise any of the Vasava's rights over the Estate or over the other Dumala villages. The Tribunal, therefore, held that the Estate vested in the Government of India as a part of Indian territory and the Vasava could not claim any right in respect thereof, and there was no question of any of the rights in regard to the Estate remaining in the Vasava on his death on 17th April 1957. The Tribunal held that, any subsequent recognition on 14th March 1958 was, in the above background, a fresh grant only. It was noted that there was a lot of difference in the nature of the rights of the deceased Vasava before 1948 and the rights given to his son in 1958, and that, by the letter dated 19-1-1958, the Government of India wanted to regularise the take-over of the estate. It was held that the content of the rights of the successor was completely different from the rights of his predecessor and it cannot be said that it was only recognition of the existing rights. The Tribunal held that, after the Act of State, the property vested in the Government of India and therefore, there was no question of the property passing after an interval, as was held by the Appellate Controller. As regards the personal properties of the deceased Vasava, the Tribunal, on the basis of the material on record, came to a finding that the personal properties of the deceased also stood on the same footing as the Estate of Sagbara. On the basis of the correspondence, it was held that the deceased Vasava was asking for compensation not only in respect of Sagbara Estate, but also in respect of Dumala villages, which were taken over alongwith the Estate. It was held that, as a matter of fact, no distinction was maintained between the Sagbara Estate and the Dumala properties of the Vasava, which were taken over by the Act of State. It was held that the effect of the Memorandum of 1954 was

repudiation of the claim of the former Vasava. On this finding, the Tribunal held that no property passed on the death of Vasava and therefore, there was no question of levy of any estate duty thereon. The question of valuation of the properties, therefore, did not survive.

5. The Reference came to be made by the Tribunal in view of the order dated 20th April 1987 of the Hon'ble Supreme Court of India in Civil Appeal No. 1256 (NT) of 1987. Earlier, a Division Bench of the High Court (Coram : Hon'ble Mr. Justice B.J.Divan, CJ & Hon'ble Mr. Justice S.B.Majmudar, J.) had rejected the Estate Duty Application No.3 of 1980 on 21-10-1980, by observing that the Tribunal had interpreted the grant to Ramsinhji as a fresh grant, and that the same contention was also urged before the Division Bench of this Court in First Appeal No.157 of 1972, which was disposed of on 28-9-1976, in which, it was held that there was a fresh grant to Ramsinhji, because, by an Act of State, the grant which was earlier in favour of Karansinhji had come to an end. It was noted that an application for leave to appeal filed against that decision before the Supreme Court, was rejected by the Supreme Court and therefore, the decision of the High Court in first Appeal No.157 of 1972 had become final. It was held that the tribunal, on its own analysing the terms of the grant in the historical background, had also come to the same conclusion. It was then observed : "If the decision of the first appeal had not been there in the case of this very Estate of Sagbara, we would have granted this rule under section 64(3) of the Estate Duty Act because the question whether it was a fresh grant to Ramsinhji or whether there was any retrospective operation of the grant, would have been required to be gone into." It was observed that, even before the Supreme Court the same position would have prevailed, because, the Supreme Court rejected the Special Leave Petition and as between the parties to that first appeal, the matter had now become final and the result was that, when karansinhji died in 1957, he had no right in the Sagbara Estate property as such. In the Civil Appeal No. 1258 (NT) of 1987, the Supreme Court, observing that the Special Leave Petition against the decision in First Appeal was rejected in limine and there was nothing to indicate that the Supreme Court expressed any view on the merits of the controversy between the parties, held that the High Court's refusal to call for the statement of the case on the questions of law suggested by the Appellate Controller of Estate Duty on the ground that the dismissal of the Special Leave Petition seeking to appeal against the decree passed in First Appeal No.157 of 1972 concluded the matter, was

erroneous. The Supreme Court observed that the questions suggested called for consideration and that a statement of case should be referred to the High Court by the Appellate Tribunal. The Appellate Tribunal was accordingly directed to refer the questions of law suggested by the appellant, which we have reproduced hereinabove, from the reference made by the Tribunal.

6. It was contended by the learned senior standing counsel on behalf of the revenue that the Sagbara Estate was not a separate Estate and therefore, there was no question of taking over the possession of the Estate whereby the rights of the holders of the Estate would be abolished. It was submitted that the merger agreement was entered into between the Rajpipla State and Dominion of India and the Vasava Karansinhji who was the Chieftain of the Sagbara Estate was not a party to any such merger agreement in respect of his Estate. It was therefore submitted that the initial take over of the Estate could not have been validly done under the treaty between the State of Rajpipla and Dominion of India and the Government officials could not have forcibly taken over the Estate. It was submitted that, because the old initial take-over was erroneous, the Government of India restored the Estate to the Vasava in January 1958. It was argued that the Government realised that the possession of the Estate property was wrongly taken over as it was not the property of the Rajpipla State and therefore, on the representation by the Vasava, the possession of the Estate was restored under the resolution dated 13-1-1958 alongwith the personal properties to Ramsinhji as the heir apparent of the deceased Karansinhji. It was submitted that since the income derived from 10-6-1948 was also to be returned, and the cash amount seized from the treasury in 1948 to be accounted for, that would show that the Estate continued to be of late Karansinhji till it came to be abolished under The Sagbara & Mevasi Estates (Proprietary Rights Abolition etc.) Regulation Act, 1962, and even the compensation came to be paid under those Regulations to Ramsinhji. Therefore, on the date of death of Karansinhji i.e. on 17-4-1957, Ramsinhji should be deemed to be holding the Estate which passed to him on the death of his father. It was then contended that there was a compromise decree between the heirs of Karansinhji showing that the compensation in respect of the Sagbara Estate was distributed between them as the heir of Karansinhji. It was further argued that the judgement in First Appeal No.157 of 1972 of this Court (Coram : J.B.Mehta and M.C.Trivedi, JJ.) delivered on 28th September 1976, was rendered in context of suits

filed by the forest contractors claiming rights under the agreements executed in their favour by the deceased Vasava Karansinhji, and that the said decision should not be taken to be conclusive on the issue whether estate duty was payable under the said Act on the ground that the property passed on the death of Karansinhji to his heir apparent. It was also argued that there could not have been granted any fresh estate on 13-1-1958 in view of the constitutional set up under which such estates were to be abolished. The learned standing counsel supported the orders of the Deputy Controller and the Appellate Controller on their finding that the deceased left his estate which passed on his death in respect of which, the estate duty was payable.

7. The learned senior counsel appearing for the Accountable Person contended that, in view of the findings rendered by the Division Bench in First Appeal No.157 of 1972 and First Appeal No. 431 of 1972 in their judgement dated 28-11-1976 that, on the eve of the death of Karansinhji, no property had vested in him by virtue of the properties having already vested in the State, the property did not pass on his death and therefore, no estate duty was payable. He submitted that the State of Gujarat was a party in those appeals and the question, whether the property had vested in the State or had continued to remain with Karansinhji after the merger of the Rajpipla State alongwith the Estate on 10th June 1998, was directly and substantially in issue and it was held that, by recognising the status of Ramsinhji, the Government had done purely an act of bounty and no other person could claim title, because, "the root of title of this family after the death of Karansinhji was only the Government Order exh. 237 of January 13, 1958". He relied upon the finding that ".... during the intervening period, the Act of State having materialised against all the properties, public as well as private of the Vasava Karansinhji by the seizure of the whole estate after merger on June 10, 1948, no title had remained outstanding in anyone as per the aforesaid legal position", and that, "....in any event, the State having recognised by this fresh grant exh.237, only defendant No.3, as Vasava, no outstanding title remained in any other heir of Karansinhji so as to confer any title on the deceased plaintiff by the aforesaid registered document, exh. 411, dated December 15, 1959."

7.1 The learned senior counsel further argued that, whether the State could or could not have taken possession of the Estate was not a matter of any consequence, because, once it is found that the Estate

was, in fact and reality, taken over by the Government, the subject would no more own the property and it vested in the State by the Act of State. It was submitted that it was undisputed that the Sagbara Estate was taken over as a part of the State of Rajpipla under the merger agreement and by statutory orders that property which had merged in the Province of Bombay was dealt with, and therefore, it could not be said that, in 1957 when Karansinh died, he had any such estate or property which could passed on his death. It was submitted that the fact that the Government of Bombay made a grant on 13-1-1958 to Ramsinhji as the heir apparent of Karansinhji cannot lead to a conclusion that it was a recognition of the earlier right of late Shri Karansinhji, because, by the Act of State by which the Estate had merged with the Province of Bombay under the merger agreement between the Rajpipla State and the Dominion of India, all the rights of Karansinhji in the estate stood extinguished. It was also submitted that the terms and conditions of the grant in favour of Ramsinhji were entirely different and there was no restoration of any sovereign power in favour of Ramsinhji. As regards the compromise decree between the heirs of Karansinhji, it was argued that such a decree in an administrative suit could have no bearing on the present litigation where the question as to whether the property vested in the State on the doctrine of "Act of State" was involved, which could not have been the subject matter of the administrative suit.

7.2 In support of his contentions, the learned senior counsel referred to the following decisions :

[a] The decision of the Privy Council in Nayak Vajesingji Joravarsingji v. The Secretary of State for India, reported in AIR 1924 P.C. 216 was cited for the proposition that, when a territory is acquired by a sovereign state for the first time, that is an Act of State. It matters not how the acquisition has been brought about. It may be by cession following on treaty, it may be by occupation of territory hitherto unoccupied by a recognised ruler. In all cases, the result is the same. Any inhabitant of the territory can only make good in the municipal courts established by the new sovereign such rights as that sovereign has, through his officers, recognised. Such rights as he had under the rule of predecessors avail him nothing. Even if in a treaty of cession, it is stipulated that certain inhabitants should enjoy certain

rights that does not give a title to those inhabitants to enforce these stipulations in the municipal courts. The right to enforce remains only with the High Contracting Parties.

[b] The decision of the Supreme Court in Maharaj Umeg Singh v. State of Bombay, reported in AIR 1955 SC 540 was cited to point out that, in the group of petitions before the Supreme Court, petition No.343 of 1954 was by the relations of the Ruler of the erstwhile State of Rajpipla and petition No. 340 of 1954 was by the jagirdars of the erstwhile State of Rajpipla, and these petitions alongwith other cognate matters, in which the provisions of the Bombay Merged Territories and Areas (Jagirs Abolition) Act, 1953 were challenged, were dismissed, by holding that, if the grievance was that the impugned Act had brought about discrimination in breach of clause 5 of the letter of guarantee which was to be regarded as a part of the merger agreement entered into by the States with the Governor General of India, then the dispute clearly arose out of the letter of guarantee and would by Article 363 of the Constitution be placed beyond the jurisdiction of the Supreme Court.

[c] The decision of the Supreme Court in State of Gujarat v. Vora Fiddali Badruddin Mithibarwala and others, reported in AIR 1964 SC 1043 was relied upon for the proposition that the integration of Indian States with the dominion of India was an Act of State, and that it was open to the new sovereign not to recognise any grant created on the eve of the merger by a `Tharao'.

[d] The decision of the Supreme Court in T.R.Bhavani Shankar Joshi v. Somasundara Moopanar reported in AIR 1965 SC 316 was relied upon for the proposition that, as the Government intended to seize all the property which actually was seized, whether public or private, the seizure as a whole was an Act of State. The Act of State having thus materialised in 1856 against all the properties of the Rajah, no title could be said to have remained outstanding in any one. The Government Order of 1862, by which the private properties were `relinquished and restored' by the Government, could not, therefore, be construed as anything except as a fresh grant due to the bounty of the British Government. It was

held that the fact that the Government Order was not worded as a grant, because, it used the words `relinquished' and `restored' did not affect the position. The document created its own conditions and indicated the line of succession.

8. There is no dispute about the fact that the Sagbara Estate was taken over under the merger agreement between the State of Rajpipla and the Dominion Government of India on 10th June 1948. This fact is reflected in various letters of Vasava Karansinhji also. In his letter dated 22nd June 1949, Vasava Karansinhji wrote to the Chief Secretary to the Government of Bombay that, "The Chief Administrator, Rajpipla the Collector of Broach District, has taken possession of my estate Sagbara - my three Dumala villages and cash on the 10th June 1948". In the petition dated 29-8-1953 by Karansinhji to the Chief Secretary, a copy of which is at Annexure `L' in the paper-book, it was mentioned in paragraph 2 as under :

"That the administration of Rajpipla State was taken over by the Central Government on 10-6-1948. The fact that Sagbara was a distinct political separate entity was not noticed, by the then Administrator of the State, and on 9-6-1948, Sagbara's possession was taken over forcibly by bringing a posse of constables from Rajpipla, together with all immovable properties, and the movables, cash, account books, and everything which went to make up the paraphernalia of Sagbara State by the then authorities."

It was then stated in paragraphs 3 and 4 as follows :-

"That, being thus deprived of everything, which the petitioner owned one time, and being reduced absolutely to penury and to the position of a man in street, without any means, he made frantic efforts to approach the Bombay Government, in the matter of redress ..... That it was a matter of grace on the part of the Bombay Government that sometime in 1949, they gave a sum of Rs.10,000=00 as a solatium, and later on, sanctioned from November 1949 a monthly allowance of Rs.2,000=00 to the petitioner. ....."

In paragraph 10 of that petition, it was contended that -

"The merger of Rajpipla was not an effective act for the merging of Sagbara, which was a distinct political entity itself. ...".

In paragraph 11 of that petition, it was alleged that -

"The action taken in dispossessing the petitioner of his state has been something like a police action. His all "Daftar" and records of his administration together with all the account books have been seized and forcibly taken possession of; all cash, moneys lying in his treasury have been forcibly removed; and his places of abode and the residence in which he was living have been also forcibly taken possession of. His staff was dismissed; and Sagbara territory was put under the control and administration of the Broach Collector, the Collector being nominated as the Administrator. This tragedy was enacted on the eventful day, at 10 O'clock in the night, on 9th June 1948, all suddenly without any notice being given to the petitioner, and behind his back, and in his absence."

Karansinhji therefore prayed that the arrears of monthly allowance from 10th June 1948 till the date of his petition be paid to him, and that, "an arrangement commensurate with his status as feudatory chief of the Sagbara with the Dominion of India, providing for the transference of all jurisdiction and powers from him to it, be made, and a proper provision for his privy purse, be made, and .....".

8.1 A reminder was sent on 19th November 1953 by Karansinhji in context of his said representation dated 29th August 1953 regarding grant of privy purse etc. Thereupon, the Government of India communicated to him by its decision dated 28th June 1954 in which it was stated that the Government of India having carefully considered the matter further, regretted that it was not possible for the Government of India - "to recognise you as a Ruler. Accordingly, there can be no question of fixation of a privy purse for you". Thus, the entire claim put up by Vasava Karansinhji raising objections against the manner in which his Estate was merged with the Province of Bombay under the merger agreement entered into by State of Rajpipla with the Dominion of Government of India stood rejected finally by this official communication.

9. Two independent dominions were set up in India, to be known respectively as India and Pakistan from the 15th day of August 1947, by section 1 of the Indian Independence Act, 1947. By section 2, it was provided that subject to sub-sections (3) and (4) thereof, the territories of India shall be the territories under the sovereignty of His Majesty which, immediately before the appointed day, were included in British India except the territories which, under sub-section (2) of section 2 were to be the territories of Pakistan. The Legislature of each of the new Dominions was given full powers to make laws for that Dominion, including laws having extra territorial operations, as provided by section 6 of that Act. By section 7(1)(b) of the Act, it was provided that as from the appointed day "the suzerainty of His Majesty over the Indian States lapses, and with it, all treaties and agreements in force at the date of the passing of this Act between His Majesty and the Rulers of Indian State, ...".

10. On 24th December 1947, The Extra - Provincial Jurisdiction Act, 1947 received assent of the Governor General (published in the Gazette of India, Extraordinary, Part IV, dated the 24th December, 1947). This Act was enacted to provide for the exercise of certain extra-provincial jurisdiction of the Central Government in respect of jurisdiction that the Central Government had or which it may acquire in relation to areas outside the provinces of India by treaty, agreement, grant, usage, sufferance and other lawful means. "Extra-provincial jurisdiction" was defined to mean, "any jurisdiction which by treaty, agreement, grant, usage, sufferance or other lawful means the Central Government has for the time being in or in relation to any area outside the Provinces". Under section 4 of that Act, the Central Government was empowered by notification in the official gazette, to make such orders as may seem to it expedient for the effective exercise of such extra-provincial jurisdiction of the Central Government. Section 5 of that Act provided that, every act and thing done, whether before or after the commencement of this Act, in pursuance of any extra-provincial jurisdiction of the Central Government in an area outside the Provinces shall be as valid as if it had been done according to the local law then in force in that area.

11. Sagbara was a feudatory of Rajpipla, as can be seen from the agreement concluded between Rajpipla State and the Vasavas of Sagbara, a copy of which is at

Annexure `R' in the paper-book. Under Article 1 of that agreement, the then Vasava admitted his subordination to the Rajpipla State, and agreed to submit to the general control of his administration by that State. Under Article VI of the agreement, it was provided that, on any change in the succession to the estate, the new Vasava shall proceed to Nandod, to be recognised as such and shall present to the Rajah of Rajpipla a Nazzrana of Rs.100=00 (British) in return for which he shall be presented with an "address of about the same value". Article XIII of the agreement provided that, the Vasava will not keep in his employee any foreign mercenaries, such as, Pathans, Arabs, Makranis, Kabulis and the like. Article XV of the agreement provided that, all laws introduced into the State will have force in the estate so far as they may apply.

12. Rajpipla State merged with the Province of Bombay under the merger agreement entered into with the Dominion of India with effect from 10th June 1948. The form of that merger agreement is reproduced in paragraph 5 of the judgement of the Supreme Court in Umeg Singh (supra). Under Article 1 of the merger agreement, which was signed by Rulers of the States in the area of Gujarat, it was provided that the State ceded to the Dominion Government full and exclusive authority, jurisdiction and powers for and in relation to the Governance of the State and agreed to transfer the administration of the State to the Dominion Government, and from the said day, the Dominion government will be competent to exercise the said powers, authority and jurisdiction in such manner and through such agency as it may think fit. Admittedly, such a merger agreement was made between the Ruler of Rajpipla State and the Governor General of India, by which the Rajpipla State had merged with effect from 10th June 1948.

13. By the States' Merger (Governors' Provinces) Order, 1949 made by the Governor General (Order No. S.O. 25 dated 27th July 1949 published in the Gazette of India, Extraordinary dated 27th July 1949), the States specified in each of the Schedules were to be administered in all respects as if they formed part of the Province specified in the heading of that Schedule, from the appointed day i.e. the date of the commencement of the said Order, as provided in clause (3) thereof. Accordingly, any reference to Acceding State in the Government of India Act, 1935 or in any Act or Ordinance made on or after the appointed day was to be construed as not including a reference to any of the merged States, and any reference in any such Act or Ordinance as

aforesaid to a province specified in a Schedule to this Order was to be be construed as including the territories of all the States specified in that Schedule. All the laws in force in a merged State or any part thereof immediately before the appointed day, including orders made under section 3 or section 4 of the Extra-provincial Jurisdiction Act, 1947 were to continue to be in force until repealed, amended or modified. Schedule II mentioned the names of the States merged in the Province of Bombay which included Rajpipla.

14. By Notification No. 2751/46-F issued by the Government of India and re-published in the Bombay Government Gazette Extraordinary Part IV-A, dated 4th June 1948, the jurisdiction for, and in relation to, the governance of the States specified in the Schedule annexed thereto, which included "Rajpipla (including Sagbara)", was delegated subject to the control of the Central Government to the Provincial Government of Bombay. In this notification issued by the Government of India, there is a recital that the Central Government had full and exclusive extra-provincial jurisdiction for, and in relation to, the governance of the States specified in the Schedule, [which included "Rajpipla (including Sagbara)"], the delegation in favour of the Provincial Government of Bombay of the extra-provincial jurisdiction of the Central Government was made in exercise of the powers conferred by sub-section (2) of section 3 of the Extra-Provincial Jurisdiction Act, 1947.

14.1 By Notification No. 2751/46-F-1 published in the Bombay Government Gazette Extraordinary, Part IV A, on 8th June 1948 (P. 242), it was provided in paragraph 3 that -

> "The areas comprised of the Rajpipla State along with its subordinate State of Segbara shall merge with and form part of the Broach District and shall be administered accordingly."

The fact that this was done pursuant to the merger agreement is clear from the following opening words of that notification :-

> "1. Whereas in accordance with the agreements executed by the Rulers of estates, thanas and talukas etc. in Gujarat agreeing to merge their respective States in the Province of Bombay;
>
> Whereas, by virtue of Article I of the said agreement, the talukas and estates etc.

mentioned hereafter having merged in the Province of Bombay with the consent of the Dominion of India;

Whereas, under the Bombay (Enlargement of Area and Alteration of Boundaries) Order, 1948, issued by the Governor General in the Ministry of Law on the 4th day of June 1948 under section 290 of the Government of India Act, 1935, the Governor of Bombay has been authorised to make an order by a notification in the official Gazette providing for the administration of the areas mentioned therein as part of the Province of Bombay either by constituting all or any of them into one or more new districts of the Province or by making all or any of them part of one or more existing districts;

Now, therefore, in exercise of the powers conferred on him by the said order and of all other powers enabling him in this behalf, the Governor of Bombay is pleased to make the following order :-

2. xxxxx

3. The areas comprised of the Rajpipla State alongwith its subordinate State of Segbara shall merge with and form part of the Broach District and shall be administered accordingly.

4. xxxxx ".

14.2 All enactments, notifications, orders, schemes, rules and bye-laws issued, made or prescribed under such enactments and in force in the Province of Bombay were extended to the areas merged with and included in the existing district or districts by this notification, as ordered in paragraph 9 thereof.

14.3 The Government of India, by a Notification published on 8th June 1948 in the Bombay Government Gazette Extraordinary Part IV, page 243, appointed the Collector of Broach to be the district Magistrate for "Rajpipla with the including the State Segbara".

14.4 In exercise of the powers conferred by section 4 of the Extra-Provincial Jurisdiction Act, 1947, the Government of Bombay had issued "Judicial Committee (Integrated States) Order, which came into force from 12th July 1949 (published in the Bombay Government

Gazette Extraordinary, dated 12th July 1949, Part IV-A at page 574A), by which a judicial committee consisting of two Judges of the Bombay High Court was constituted with full powers and jurisdiction to decide all civil and criminal appeals and other proceedings pending before the Ruler of any State or any other Tribunal therein by whatever name called. These integrated States were specified in the Schedule of the Order and under the heading "Gujarat States", `Rajpipla (including Sagbara)'" was specified. The date of integration of the `Gujarat States' including the State of Rajpipla (including Sagbara) was shown to be 10-6-1948.

14.5 In exercise of the powers conferred by section 7 of the Land Revenue Code read with Notification No. S.O. 25 dated 27th July 1949, issued by the Government of India in the Ministry of Law, the Government of Bombay issued the Order dated 29th July 1949 (published in the Bombay Government Gazette Extraordinary, Part IV-A, dated 29th July 1949 at page 605, inter alia, re-constituting, (see its Part III, at page 683), Districts of Bombay Province `as a result of merger of Baroda and other Gujarat States'. At item (I) of Part III - Broach District was re-constituted by ordering that, "The areas comprising the Rajpipla State and the Gardeshwar Mahal shall be included in and form part of Broach District". It was ordered :

> "The following new talukas and two mahals comprising the areas of Rajpipla State and Gardeshwar Mahal as shown in the schedules I-A to I-E appended hereto shall be constituted".

`Sagbara Mahal' was mentioned at item (5) as part of the area of Rajpipla State, which had merged with the Province of Bombay. As per the Schedule 1-A to 1-E (at page 727 of the Gazette), talukas of the re-constituted Broach District are shown. Rajpipla village is one of the 227 villages of Nandod taluka of Broach district in Schedule 1-A. Schedule 1-E shows 115 villages of Sagbara Mahal under the Broach District, including Sagbara village. Thus, after the merger of the State of Rajpipla which included Sagbara Estate, the areas of the integrated State were included in the Broach District which was in the Province of Bombay by re-constituting the Broach District.

14.6 By Notification dated 13th July 1949 published in the Bombay Government Gazette, Part IV-A, dated 31st July 1949, the Government of Bombay, in exercise of powers conferred by sections 3 and 4 of the Bombay Civil Courts

Act, 1869, altered the limits of the existing judicial districts, and directed that the limits of the judicial districts shall comprise the limits of revenue districts of the same names as constituted under the government notification dated 29th July 1949. Necessary orders creating judicial district of Broach for the purpose of civil and criminal jurisdiction were issued and Sagbara Mahal (115 villages) was shown as a part of the judicial district of Broach (see page 152 of the said Gazette).

15. The above facts will show that Rajpipla including its Sagbara Estate had effectively merged with the Province of Bombay and had become part of the re-constituted Broach District. After the possession of Sagbara Estate was taken over alongwith Rajpipla State, it stood so merged with effect from 10th June 1948 with the Province of Bombay pursuant to the merger agreement with the Dominion Government. The effective legislative, administrative and judicial control was established over the merged State of Rajpipla (including Sagbara) and that integrated State ceased to exist with effect from 10th June 1948 and became part of the Province of Bombay, as a result of which its territories came to be included in the re-constituted District of Broach.

16. By the merger agreement, the States of Rajpipla including Sagbara ceded with the Dominion of India and became part of the Province of Bombay. By voluntarily merging into another State, a State loses all its independence and becomes a mere part of another. The object of cession is to establish sovereignty over such territory as has hitherto already belonged to another State. As far as Law of Nations is concerned, every State as a rule can cede a part of its territory to another State, or by ceding the whole of its territory can even totally merge in another State. (See Oppenheim's International Law Vol.I, Eighth Edition, para 215, at page 548).

16.1 Even if, for the sake argument, Sagbara was not to be treated as a part of the territory of the erstwhile Rajpipla State, Sagbara Estate alongwith private properties of the Vasava came to be occupied by the acquiring State by act of appropriation after it was taken over on 9th June 1948 forcibly, as stated by the Vasava himself in his letter dated 29th August 1953. One of the modes of acquisition of territory of a State is occupation. By such act of appropriation, the State intentionally acquired sovereignty over such territory as is at that time not under the sovereignty of another State. Occupation differs from cession in that through

cession, the acquiring State receives sovereignty over the territory concerned from the former owner-State. Cession, therefore, is a derivative mode of acquisition, whereas occupation is an original mode. (See Oppenheim's International Law Volume I Peace, Eighth Edition, Paras 213 and 220).

16.2 The facts, however, clearly disclose that the territory of Sagbara Estate which was not an independent State was subjected to the general administrative control and laws of the Rajpipla (including Sagbara) ceded under the merger agreement with the Dominion of India with effect from 10th June 1948. It was accordingly taken over by the acquiring State and treated as merged with the Province of Bombay. Effective sovereign control was established over it by the Dominion of India. The fact that the administration was handed over to the Collector, Broach and the jurisdiction of the courts was extended, shows that the said area of Sagbara Estate was really governed by the new sovereign after it was taken over under the said merger agreement. The effectiveness of take-over that necessarily conferred sovereignty over the territory on the acquiring State was never questioned at the relevant time by the Vasava, who only asked for a privy purse or compensation.

17. The municipal courts cannot go into the question whether territory has been validly acquired by the State by cession or occupation and it lies within the prerogative powers of the State to extend its sovereignty and jurisdiction to areas of land or sea over which it has not previously claimed or exercised sovereignty of jurisdiction. The acquisition of territory by sovereign State for the first time is an Act of State which cannot be challenged, controlled or interfered with by the Courts of the State. This principle precludes any contest between the executive and judicial branches of the State as to whether a territory does or does not legally belong to the State. The Act of State by which the area is acquired by the State and its sovereignty established over it is not justiciable in the municipal courts.

17.1 It will be seen from the provisions of Article 363 of the Constitution that, neither the Supreme Court nor any other Court shall have jurisdiction, in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of the Constitution by any Ruler of an Indian State and to which the Government of the Dominion

of India or any of its predecessor Government was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of the Constitution relating to any such treaty, agreement, covenant, engagement, sanad or other similar instrument. The words `Indian State' are defined to mean, `any territory recognised before the commencement of the Constitution by His Majesty or the Government of the Dominion of India as being such a State. A dispute that the territory of Sagbara Estate was not transferred under the merger agreement between the Ruler of Rajpipla State and the Governor General, would amount to raising a dispute as to whether the territory of Sagbara estate validly merged in the Province of Bombay under that merger agreement, which would be barred by Article 363. The statutory provisions that followed the merger agreement clearly show that the acquiring sovereign, treated Sagbara Estate as a part of Rajpipla State which had ceded under the merger agreement with the Dominion of India and became part of the Province of Bombay pursuant thereto. It would, therefore, not be open even for the Revenue to raise a contention that Sagbara Estate had not legally been transferred under the merger agreement between the Ruler of Rajpipla State ceding Rajpipla including Sagbara Estate to the acquiring State. Therefore, even in the context of Article 363 of the Constitution, the contention, which was surprisingly sought to be raised on behalf of the Revenue, that the initial take over of Sagbara Estate as a part of Rajpipla State was void and that the Estate could not have forcibly taken over by treating it as a part of Rajpipla State, cannot be countenanced.

17.2 As observed by the Supreme Court in paragraph 10 of the judgement in Umeg Singh (supra), if the petitioners in that group of matters were deemed to be parties to the agreements of merger and letter of guarantee, they would be faced with the bar to the maintainability of the petitions under Article 363 of the Constitution, which lays down that neither the Supreme Court nor any other Court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instruments which was entered into or executed before the commencement of the Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India was a party.

18. An Act of State is essentially an exercise of

sovereign power, and therefore, cannot be challenged, controlled or interfered with by municipal courts. Its sanction is not that of law, but of sovereign power, and, whatever it be, municipal Courts must accept, as it is, without question. But it may, and often must, be part of their duty to take cognizance of it. For instance, if an act is relied upon as being an Act of State, and as thus affording an answer to claims made by a subject, the Courts must decide whether it was in truth an Act of State, and what was its nature and extent. In the case of Salman v. Secretary of State in Council of India, reported in (1906) 1 K.B. 613, where the East India Company, as representing the Crown, annexed the territory of a native State, and confiscated the State property, granting to the Maharajah, the Ruler of the State, who was then an infant, a pension for life, and the Company also assumed the custody of his person during his minority, and took possession of his private property, and an action was brought after his death by the trustee in bankruptcy of his residuary legatee against the Secretary of State for India, as the successor of the East India Company, for arrears of the pension, and for an account of the private property, it was held by the Court of Appeal that, under the circumstances, the acts done seize the whole, for, the purposes which they had in view required application of the whole and held that: "The property now claimed by the respondent has been seized by the British Government acting as a sovereign power through its delegate, the East India Company, and that the act so done, with its consequences, is an act of State over which the Supreme Court of Madras has no jurisdiction". It was held that : "...acts done in the execution of the sovereign powers were not subject to control by municipal courts, either of India or Great Britain, was sufficiently established by the cases of Nabob of Arcot v. The East India Company in the Court of Chancery, in the year 1793, and The East India Company v. Sayed Ally before the Privy Council in 1827."

18.2 The Privy Council judgement in Kamachee's case (supra) was considered by the Supreme Court in State of Gujarat v. Vora Fiddali Badruddin Mithibarwala, reported in AIR 1964 SC 1043, and it was noticed in paragraph 22 that the decision was referred to with approval by the Privy Council in a case from India in Secretary of State v. Bai Raibai, reported in AIR 1915 PC 59, where the question that arose before the Privy Council was, whether the respondent was entitled to continue ownership and possession of village called Charodi in the "Province of Gujarat". The respondent's title to the village was ultimately based on rights claimed to have been granted

by the Gaekwar of Baroda. The territory in which the village was situated was ceded by the Gaekwar to British Government in 1817. The claim of the respondent to full ownership of the property was not recognised by the Indian Government after the cession and Government held that the respondent had no more than a leasehold interest. The question before the Privy Council was whether the respondent was entitled to assert in municipal courts rights more extensive than what had been recognised by the authorities. Lord Atkinson, delivering the judgement, said -

> "..... The relation in which they stood to their native sovereigns before this cession, and the legal rights they enjoyed under them, are, save in one respect, entirely irrelevant matters. They could not carry in under the new regime the legal rights, if any, which they might have enjoyed under the old. The only legal enforceable rights they could have as against their new sovereign were those, and only those, which that new sovereign, by agreement expressed or implied, or by legislation, chose to confer upon them. ....."

The Supreme Court also referred to the decision of the Privy Council in Asrar Ahmed v. Durgah Committee, Ajmer, reported in AIR 1947 PC 1, in which Lord Simonds said -

> "From this, it follows that the rights, which the inhabitants of that State enjoyed against its former rulers, availed them nothing against the British Government and could not be asserted in the Courts established by that Government except so far as they had been recognised by the new sovereign power. Recognition may be by legislation or by agreement express or implied. ...."

In paragraph 29 of the judgement, the Supreme Court held -

> "That a new sovereign emerged on the unification of India by the merger or absorption of the Indian States with the Provinces of British India cannot be questioned and that this was by the process of the sovereignty of the rulers of the former Indian States being extinguished cannot be disputed either."

In paragraph 30 of the judgement, it was held -

"A transfer of territory from under one sovereign to another may be effected in a variety of ways; conquest, annexation, by cession under a treaty after a war or without a war, by revolution, by emancipation of subject people and by territorial resettlements. These changes possess one common feature viz., that one sovereign ceases to rule a territory and another takes its place. ..."

18.3 The Kamchee's case (supra) was also approvingly considered in T.R.Bhavani Shankar Joshi v. Somasundara Moopanar, reported in AIR 1965 SC 316, in paragraphs 4 and 7 of the judgement, and it was held that it was impossible to construe the Government Order by which the private properties of the Rajah were `relinquished and restored' as anything except as a fresh grant.

18.4 In Govindrao v. State of Madhya Pradesh reported in AIR 1982 SC 1201, the Supreme Court in paragraph 33 of the judgement held that -

"After a sovereign state has acquired territory, either by conquest or by cession under treaty or by the occupation of territory theretofore unoccupied by the recognised Ruler or otherwise, an inhabitant of a territory can enforce in the Municipal Courts only such proprietary rights as the sovereign has conferred or recognised. Even if a treaty of cession stipulates that certain inhabitants shall enjoy certain rights, that gives them no right which they can so enforce."

19. The learned senior standing counsel for the Revenue submitted that, if the Sagbara Estate vested in the Dominion of India and merged with the Province of Bombay pursuant to the merger agreement by the Ruler of Rajpipla State, the subsequent release by the Central Government under the communication dated 13th January 1958 was equally an Act of State, which restored the Sagbara Estate to the Vasava with retrospective effect, as a result of which, it should be deemed to have passed on his death on 17th April 1957. In order to avoid misconception, it is necessary to note here that the doctrine as to Act of State can apply only to acts which affect foreigners and which are done by the orders or with the ratification of the sovereign. As between the sovereign and his subjects, there can be no such thing as an act of State. The duty of the courts of law indeed is to protect the subjects from the illegalities that may be

committed by the public authorities.

19.1 In the Halsbury's Laws of England, Third Edition, Vol.7, an Act of State is defined in para 593 as follows:-

> "An act of the executive as a matter of policy performed in the course of its relations with another state including its relations with the subjects of that state, unless they are temporarily within the allegiance of the Crown, is an Act of State."

An act of State is a prerogative act of policy in the field of foreign affairs performed by the sovereign in the course of its relationship with another State or its subjects. (See Para 1413, Halsbury's Laws of England, 4th Edition, Vol. 18 at page 725). Making of treaties, annexation of area or territory, seizure of land are typical acts of State. Thus, while acquisition of Sagbara Estate by cession pursuant to the merger agreement and by its effective merger was indeed an act of State on the part of the Dominion of India, the subsequent release in favour of Ramsinhji was not an act of State, but was only a grace shown by the Government of India towards its own citizen, because, after merger, Ramsinhji became the subject of the Dominion of India.

20. One more aspect needs to be noted here. When on cession or by subjugation sovereignty is passed on to the acquiring State over a territory and sovereignty is assumed over it by the new sovereign, there can be no resumption or restoration of such sovereignty by the erstwhile sovereign. "....if a sovereign authority parts with its sovereignty, it cannot, of its own will, resume it." (See Grammar of Politics by Harold, J. Laski : 5th Edition, Page 50). Cession can be only by a treaty between two sovereign states and once the erstwhile state ceased to exist as an international person, there could arise no question of entering into a treaty, with an extinct State for restoration. Sovereignty once conceded goes beyond the reach of the ceding State which becomes extinct and there remains no such political entity to whom the sovereign power can be restored. After all, sovereignty cannot be reduced to a level of a commodity which can be given and taken back. If at all, the new sovereign may by division of its territory create a new State and transfer its sovereignty over such portion for effectively creating a new sovereign State. Then only the territory given up by effecting the division will belong to the newly created sovereign State. No such

thing could be attributed to the act of releasing the Sagbara estate by the Central Government under letter dated 13th January 1958 to Ramsinhji who by then, was an Indian citizen. It was just an instance of grace shown by the Government of India which had acquired complete sovereignty over this territory by virtue of the merger agreement with the Dominion of India, which could not have been questioned in the municipal courts in India, in view of the provisions of Article 363 of the Constitution, on the ground that it had not legally merged the area of Sagbara Estate when the Ruler of Rajpipla ceded the territory of the State of Rajpipla including the Sagbara Estate to the Dominion of India. In other words, once the area of the Sagbara estate had become a part of the Indian territory, there could arise no question of restoring it retrospectively with effect from 10th June 1948 to the Vasava as if it had not merged under the cession that took place on 10-6-1948, integrating Rajpipla State including the Sagbara Mahal with the Dominion of India. Restoration of Sagbara Estate under the letter dated 13-1-1958 has, therefore, necessarily to be treated as a fresh grant to Ramsinhji made on its own conditions and not with a view to confer any quasi-sovereign status within the Independent Indian Republic.

21. Thus, since the area of Sagbara Estate and the private properties of the Vasava were taken over on 10th June 1948 by the Dominion of India under the merger agreement with the erstwhile ruler of Rajpipla, Vasava Karansinhji who was reduced to penury as lamented by him in paragraphs 2 and 3 of his letter dated 29th August 1953 (at Annexure `L' in the paper-book), there remained no property with Karansinhji, who at the time of his death on 17th April 1957, was not competent to dispose of any of the properties which were taken over by the act of State on 10th June 1948 and had vested in the Dominion of India under the merger agreement. Only the property which the deceased had at the time of his death and which he was competent to dispose of, shall be deemed to pass on his death, as provided by section 6 of the Estate Duty Act. Since there was no property which could pass on the death of Karansinhji under section 5 of the Estate Duty Act, there could arise no question of levy of estate duty from the accounting person.

22. The Tribunal was, therefore, in our opinion, right in holding that, at the time of death of Karansinhji of Sagbara, no property which was part of Sagbara Estate or personal property of the deceased which stood on the same footing, passed on his death on 17th

April 1957. All the three questions referred to this Court by the Tribunal are, therefore, answered in the affirmative against the Revenue and in favour of the Accounting Person. The Reference is answered accordingly and is disposed of, with no order as to costs.

MARCH 22, 2002 [R.K.ABICHANDANI, J.]

[KUNDAN SINGH, J.]

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